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May 14, 2004

## VIA HAND DELIVERY

Deborah Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37219

Re: Petition of Chattanooga Gas Company for Approval of Adjustment  
of its Rates and Charges and Revised Tariff  
Docket Number 04-00034

Dear Chairman Tate:

Enclosed you will find original and thirteen copies of Chattanooga Gas Company's Response to Chattanooga Manufacturer Association Motion to Serve Additional Discovery Requests.

Please contact me if you have any questions.

Sincerely,



D. Billye Sanders  
Attorney for Chattanooga Gas Company

DBS/hmd  
Enclosures

cc: Parties of record  
Archie Hickerson  
Steve Lindsey  
John Ebert, Esq.  
Elizabeth Wade, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**May 14, 2004**

IN RE: PETITION OF CHATTANOOGA            ) Docket No 04-00034  
GAS COMPANY FOR APPROVAL OF            )  
ADJUSTMENT OF ITS RATES AND            )  
CHARGES AND REVISED TARIFF            )

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**RESPONSE OF CHATTANOOGA GAS COMPANY TO CHATTANOOGA  
MANUFACTURERS ASSOCIATION'S REQUEST TO SERVE ADDITIONAL  
DISCOVERY REQUESTS**

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1. In its Motion to Compel and Memorandum in Support of the Request of the Chattanooga Manufacturing Association To Serve Additional Discovery Requests, the Chattanooga Manufacturers Association (CMA) cites no good cause for its effort to exceed forty discovery requests. CMA merely hitches its wagon to “an identical motion filed by the Consumer Advocate,” and states that this is a complex case<sup>1</sup> and “the relevance of each question is self-evident.”<sup>2</sup> CMA’s motion fails to establish “good cause for the service of additional interrogatories or requests for production”<sup>3</sup> for the reasons set forth below. Therefore, Chattanooga Gas Company (CGC) respectfully requests that CMA’s motion be denied.
2. CMA has not complied with TRA Rule 1220-1-2-.11(5) with respect to the requirements for a motion to seek permission to serve more than forty (40) discovery requests. TRA Rule 1220-1-2-.11(5) states that any such motion shall set forth the additional requests and be accompanied by a memorandum establishing good cause. CMA’s memorandum gives no reasons for why it needs to ask particular questions or why the data supplied or to be supplied by

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<sup>1</sup> CMA Motion p 1, paragraph 2

<sup>2</sup> CMA Motion p 2, 1<sup>st</sup> full paragraph

<sup>3</sup> Rule 1220-1-2- 11(5)(a)

the company in response to its first 40 questions<sup>4</sup> and the 145 questions that have already been asked by the TRA Staff and other parties, the responses to the minimum filing guidelines, and the company's pre-filed testimony will not provide sufficient information for its analysis.

3. CMA seeks an exception to Rule 1220-1-2-.11(5) and contends:

This is a complex, precedent-setting rate case. The TRA Staff, for example, has already issued more than one hundred data requests. The Consumer Advocate has also asked substantially more than forty questions, a limitation which may be appropriate in a routine complaint case but is hardly sufficient for a large utility rate proceeding.<sup>5</sup>

Yet as stated above, CMA has not been specific as to why the voluminous amount of information already available in this docket or to be obtained from outstanding discovery requests is not sufficient to analyze its issues. The mere fact that more than 40 questions have been asked by the Staff (which is not a "party" in this docket) is not sufficient to establish good cause for CMA to be granted leave to serve additional discovery requests. On the contrary, the rule was promulgated to prevent overly burdensome discovery. Therefore, the amount of discovery that has already been propounded is reason to enforce Rule 1220-1-2.11(5) and limit the discovery requests to 40 questions per party.

4. CMA has asserted that CGC did not follow the voluntary Guidelines that have never been subject to the rulemaking process or any official review by the TRA, while advocating ignoring a Rule 1220-1-2 11(5) which has been adopted by the TRA. In its motion, CMA has mischaracterized the Minimum Filing Guidelines and has implied a requirement where no such

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<sup>4</sup> CMA attached to its motion the same discovery requests that it served on CGC on April 26, which purport to contain 33 questions. The document actually has 70 questions including subparts. (See the attached copy indicating the count.) Discovery Request 14 is question number 40.

<sup>5</sup> CMA's Motion to Compel and Memorandum in Support of the Chattanooga Manufacturing Association to Serve Additional Discovery Requests page 1, paragraph 2.

requirement exists. The nature of the Guidelines as optional and entirely voluntary is clearly presented within the preamble of the Guidelines that was drafted by the CAPD Staff, the TRA Staff, and representatives of the three gas utilities that participated in the project. The Guidelines begin with the following sentence.

To avoid duplication of requested information, assure more orderly and timely investigations, and provide better support for rate filings, the Tennessee Regulatory Authority (“TRA”) offers a natural gas distributor filing an application for a rate increase **the option** of providing supporting information with its application (emphasis added).

While the CAPD’s representatives, the TRA Staff and representatives of the gas companies agreed that the Guidelines were being offered to the gas distribution companies *as an option*, CMA, like the CAPD, mischaracterizes the Guidelines as a requirement, and contends that CGC has chosen “not to follow the Guidelines in a timely manner.” However, CMA failed to recognize that CGC’s voluntary provision of data could not be considered untimely when the Company was under no obligation to file the data.

5. The voluntary nature of the Guidelines is further substantiated by the following statements included in the Guidelines themselves:

These requests are intended to initiate, and should be regarded as part of, the data request process. The provision of information in response to these requests at the time of filing an application for a rate increase **is entirely optional** (emphasis added).

and

The failure to **file any specific information shall not be** grounds for non-acceptance of the application or for an extension of the time intervals set forth in Tenn. Code Ann. §65-5-203 (emphasis added).

6. Even though these guidelines are optional, CGC filed the majority of the items identified in the Guidelines well in advance of CMA's filing to intervene in this docket.<sup>6</sup> Indeed, these voluntary guidelines were jointly developed by the CAPD, the TRA Staff and the gas companies in order to cut down on the amount of additional discovery that would be needed in a rate case. There are 86 questions (not including subparts) in the guidelines. CMA has not offered sufficient reasons why forty additional data requests, along with this information, and the information requested by other intervenors would not allow it to obtain the information it needs to prepare its case.

7 It appears that CMA may be attempting to abuse the discovery process by issuing excessive data requests. Rather than issue a request that complied with Rule 1220-1-2- 11, CMA initially issued a request on April 26, 2004 that included 70 subparts.

8 CMA's contention that CGC has blocked discovery is totally unsubstantiated. To the contrary, CGC provided substantive answers to all of the discovery requests that it is required to answer under the TRA Rules.<sup>7</sup>

In addition to responses to the minimum filing guidelines, CGC has already responded to 102 data requests issued by the TRA Staff, 40 discovery requests propounded by the CAPD and 40 discovery requests of the CMA. CMA's argument that parties in another case may have ignored rule 1220-1-2-.11(5), does not render the rule invalid. Further, CMA's contention that CGC should have notified CMA of its objection prior to the filing date for objections is ludicrous. This can hardly be construed as a delay tactic. CMA's attorney can read the rules just

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<sup>6</sup> Several of the items identified in the Guidelines are proprietary and confidential and CGC waited for the Authority to approve its proposed protective order (5/7/2004) before filing the documents

<sup>7</sup> The claim of blocking discovery is more appropriately applied to CMA, which objected to most of CGC's discovery requests (including a simple requests to supply CMA's charter and bylaws) and to the CAPD, which objected to nearly all of CGC's discovery requests, even those that mirrored questions asked by the CAPD of CGC  
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like CGC's counsel and CGC is not required to respond before the filing deadline.<sup>8</sup> Moreover, CGC raised the limitations of Rule 1220-1-2-.11 at the prehearing conference on April 19 with respect to the CAPD discovery requests. Subsequent to this, the CAPD filed a motion seeking additional discovery and CGC filed a response. Surely, it could not have been a surprise that CGC would invoke Rule 1220-1-2- 11 relative to other intervenors as well. CMA's position regarding delay is ironic because CMA itself requested an extension to file discovery requests to which CGC agreed in a spirit of cooperation. Now, CMA accuses CGC of delay.

Finally, pursuant to the notice of the May 10, 2004 status conference, it was CGC that initiated communications with the parties to try to schedule a time prior to the status conference to discuss and resolve outstanding procedural issues and discovery disputes. However, none of the intervenors was available to meet on Monday morning prior to the conference when CGC's representatives would be in town. Consequently, CMA's claims regarding delay tactics are not made in good faith and are totally unfounded with respect to CGC. As it has done with all data requests in this case, CGC intends to comply with all lawful requests for discovery.

9. CMA's arguments do not establish "good cause" for issuing additional discovery requests. Rule 1220-1-2- 11 was designed to prevent parties from abusing the discovery process. CGC simply asks that CMA be required to review the information previously provided in this case and narrow its requests to comply with Rule 1220-1-2-.11.

WHEREFORE, CGC respectfully requests that CMA's motion be denied.

CGC further respectfully requests that the Hearing Officer rule on this and the corresponding outstanding motion of the CAPD as soon as possible, so that the remaining procedural schedule can be established in this docket

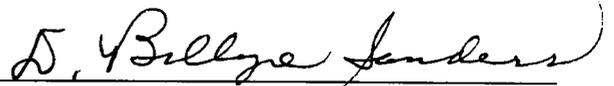
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<sup>8</sup> Note that CMA did not advise CGC in advance of its response that it was going to object to nearly all of CGC's discovery requests

Respectfully submitted,

CHATANOOGA GAS COMPANY

By.

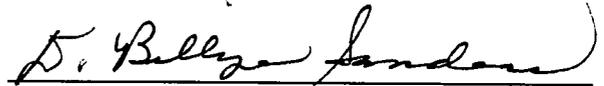


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Its Attorney

CERTIFICATE OF SERVICE

I, hereby certify that on this 17<sup>th</sup> day of May 2004, a true and correct copy of the foregoing document was delivered by hand delivery or U.S. mail postage prepaid to the other Counsel of Record listed below.



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